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ABSTRACT

School principals are informed of their responsibilities concerning the Copyright Law of 1976 in this brief leaflet. The leaflet begins with a short explanation of the law and of the guidelines developed after the law was enacted. The guidelines have direct implications for the classroom teacher. An outline of the more important concerns, with appropriate commentary, is presented. The guidelines concern books and periodicals--both single copying for teachers and multiple copying for classroom use. A summary chart of the guidelines is included at the end of the text. Guidelines for music education with implications for school performances are also listed. The final section summarizes provisions for statutory damages for copyright infringement and offers suggestions to aid school personnel requesting permission to copy. Suggestions are also offered for dealing with the spirit of the law as well as anticipating some potential problems that might arise. (MLF)

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A Legal Memorandum

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The Copyright Law: Implications for the Principal

The Congress shall have power...To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writing and discoveries.

Article I, Section 8
United States Constitution

The idea of copyright and the need for laws to protect the rights of "authors and inventors" is an apparently easy concept to understand. Legislation supporting the exclusive right to a publication, production, or similar work exists to "foster the creation and dissemination of intellectual works for the public welfare...(and) to give creators the reward due them for their contribution to society."[1]

A counterbalance to this entitlement is the concern that the primary rationale of the copyright clause in the Constitution was not to benefit the authors and inventors but to advance the public welfare.[2] In addition to the need for focus on the rights of those who develop writings and discoveries comes the need of the citizenry--including principals, teachers, and students--to use such works to advance themselves and the society in which they live. As the educational leader of the school, the principal clearly has the responsibility both to inform the faculty of their rights as information users and reproducers and to maintain the legitimacy of entitlement to those who developed the materials which classroom teachers desire to use.

A key to this responsibility is an understanding of the Copyright Law of 1978 and guidelines developed after the law, as well as some knowledge of how these entities came to exist.

Based on a 1710 English edict known as the Statute of Anne, most of the states enacted copyright laws, and federal action then surfaced in the form of Article I, section 8 of the U.S. Constitution as noted above. From the first federal copyright statute in 1790, revisions were made in 1831, 1870, and 1909. The Act of 1909, which remained in force until January 1, 1978, was severely limited by problems such as the assumption that the printing press would be the prime disseminator of information and it further contained no specific reference to the institutional care of materials. The Act needed to be revised particularly because of the totally unanticipated and rapid use of technology and communication techniques: radio, television, computers, videotape, and the most vital of all school duplication efforts, the electrostatic copying (Xerox) system developed by Chester Carlson in the 1960s.[3] These advances made the Act of 1909 outdated and of limited use.

The Copyright Law of 1978

On October 19, 1976, President Gerald Ford signed P.L. 94-553[4] for the general revision of the United States copyright law, to be implemented on January 1, 1978. The new law was cheered by some[5] and condemned by others as a "warped and illegible slide rule."[6] As a result of some of the concerns about the law from educational groups, Congress appointed a committee of interested persons to prepare guidelines regarding the Act. These guidelines provide "an indication of the legislative intent of the law, intended to be used by individuals and the courts in future deliberations concerning copyright violations."[7]

In order to comply with the law and its accompanying guidelines one must understand the term "fair use." This concept sets a limitation on the exclusive rights of the copyright owner. Section 107 of the Copyright Law specifies that:

> ...the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section (Sec. 106) for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research is not an infringement of copyright.[8]

Further language in Section 107 suggests that the following broad criteria be used to evaluate the concept of fair use as applied to educators:

1. The purpose and character of the use, including whether such is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

Implications for the Classroom

Within these general parameters, the guidelines prepared by the committee appointed by the Congress to "interpret" the Act have direct implications for the classroom teacher. An outline of the more important concerns follows, with appropriate commentary. The underlying assumption is that the copying is in a nonprofit educational institution with no charge to students for the duplication.

I Books and Periodicals—Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book;
B. An article from a periodical or newspaper;
C. A short story, short essay, or short poem, whether or not from a collective work;
D. A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

An analysis of the Act and the guidelines makes it clear that there was very little concern about a teacher developing resources for the advancement of his or her own scholarship. Such copying is consistent with a teacher's role in planning for classroom teaching. What appeared to be of great concern, however, was the making of multiple copies of educational materials. To this end, the following guidelines were adopted:

II Books and Periodicals—Multiple Copies for Classroom Use

Multiple copies (not to exceed more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

A. The copying meets the tests of brevity and spontaneity as defined below, and
B. Meets the cumulative effect test as defined below, and,
C. Each copy includes a notice of copyright.

Definitions--

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

(Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

(iii) Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

(iv) "Special works:" Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and
(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

A summary chart of these guidelines is included at the end of this text.[9] It is strongly suggested that principals place copies of this chart near duplicating facilities to inform teachers of their responsibilities under the law. While sometimes confusing, the guidelines nevertheless should be available to all teachers as they duplicate materials.

Of further personal consequence for the principal is the lack of language in the guidelines discussing the concept of fair use for anyone but the teacher. While an overt analysis of the guidelines might suggest that "nonclassroom educators" such as principals, librarians, counselors, etc. were overlooked, such is not the case. Representative Kastenmeier[10] clarified the concern when he suggested that "(T)he committee regards the concept of 'teacher' as broad enough to include instructional specialists working in consultation with actual instructors." In assessing the role of nonclassroom educators, Jerome K. Miller[11] suggests that:

> When a specialist works in collaboration with a teacher to locate or produce learning materials, then the specialist has the same privileges as a teacher would have. This does not permit a specialist or an administrator to direct a teacher to make the copies, or to make the copies and direct a teacher to distribute them. Nonclassroom educators only have the teacher's broad rights when they are working in close collaboration with a teacher.

A third and very significant area of concern for the principal is the area of music education, with implications for school performances. Again, guidelines were established by an ad hoc committee of publishers and users of music. These guidelines are also intended to be minimal and acknowledge that there may well be instances in which copying does not fall under them, but may be permitted under the criteria of fair use. These guidelines were developed in cooperation with the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, and the National Association of Schools of Music, and provide for both permissible uses and prohibitions as follows:

III Educational Uses of Music

A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reasor are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) or copyrighted music may be made from sound recordings owned by an educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A (1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

Three key points are made for the classroom music instructor. First, in emergencies, sheet music can be copied to replace purchased copies, but replacement copies must be purchased within a reasonable period of time. Second, in the case of text copies, music teachers can make single copies (or records) for their own scholastic research. Finally, in classroom situations, a teacher can make sufficient copies of a work to provide one copy per student.

Copyright Infringement and Permission To Copy

Section 504 of the copyright law provides a "normal" penalty of from $250 to $10,000 in statutory damages for infringement, but the penalty can be as high as $50,000 if the infringement is committed willfully. However, a key provision of the Act provides that if you work for an educational institution or library, and you believe you are following the law, you may not be penalized for a violation.[12] Such protection, however, does not cover court costs and attorney's fees. In addition, in any lawsuit including a teacher in a given building, the employing institution could be held liable along with the teacher.[13]

Suggestions that might aid school personnel requesting permission to copy are given below:

1. Give the title, author(s) or editor(s), and the edition used.
2. Give the exact amount of material to be used, page numbers, and a photocopy of the material requested, if possible.
3. If the initial contact was made by phone, refer to the contact by name in the letter.
4. State the nature of the use, including how many times the material will be used, whether on or off campus, and whether in classrooms or in promotional mailings, etc.
5. State the number of copies to be made.
6. State how the material will be reproduced (ditto, offset, photocopy, etc.).

Although case law on abuse of these copyright provisions at K-12 levels is minimal, the following suggestions should prove helpful in dealing with the spirit of the law as well as anticipating some potential problems that might arise.

Suggestions

1. Provide an inservice presentation on the Copyright Law to review duplication guidelines.
2. Post reference charts near duplication facilities to keep users informed of guidelines.
3. Have a special meeting with music and performance personnel to review their responsibilities under the law.
4. Develop a process for seeking copyright permission through a central person (e.g., librarian) who would also maintain all records and correspondence.
5. Recognize the limitations of the principal's ability to direct duplication efforts of teachers under the multiple-copy section of the law.

FOOTNOTES

[1]General Guide to the Copyright Act of 1976, (Washington: The Library of Congress), Ch. 1, p. 1.

[2]Thomas C. Brennan, "Provisions for Library Photocopying in the New Copyright Act" in The Copyright Dilemma, Herbert S. White, ed. (Chicago: American Library Association) p. 19.

[3]Lynne S. Gross and William Millington, "Coping with the New Copyright Law," Change, August 1977, p. 48.

[4]17 U.S.C. §101 et seq.

[5]Barbara Ringer, General Guide to the Copyright Act of 1976, (Washington: The Library of Congress), Ch. 1, p. 2.

[6]Michael H. Cardoza, "To Copy or Not to Copy for Teaching and Scholarship: What Shall I Tell My Client?" Journal of College and University Law, 1977, p. 59.

[7]Charles Litz and William Sparkman, "What the New Copyright Law Means to Educators," NASSP Bulletin, January 1977, p. 72.

[8]H.R. 94-1733, 94th Congress, Second Session, 122 Cong. Rec. 11710 (1976)

[9]Roe Sturdevant, "Commonsense Photocopying," Phi Delta Kappan, May 1980, p. 620.

[10]Robert W. Kastenmeier, (Remarks) Congressional Record, Vol. 122 (September 22, 1976) p. 10874.

[11]Jerome K. Miller, Applying the New Copyright Law: A Guide for Educators and Librarians, (Chicago: American Library Association), p. 51.

[12]"Copyright Law Excuses Unknowing Violators" The Chronicle of Higher Education, January 23, 1978, p. 1.

[13]Sturdevart, op. cit. p. 620.

[14]Ibid., p. 620.

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Simplified Usage Guidelines Indicating Fair Use for Teachers*

Material	Fiction Nonfiction Textbooks Theses	Stories Essays Anthologies Encyclopedias	Poetry	Periodicals	Cartoons Charts Pictures	Lectures Sermons Speeches
Instructor's Copy	1 chapter	1 story or essay	1 article	1 article	1 per book or issue	1 per book or issue
Multiple Copies	1,000 wd. excerpt or 10%	2,500 wd. excerpt or story	250 wd. excerpt or poem	2,500 wd. excerpt or essay	same as above	same as above
Cumulative Use per Class per Term	2	2-3	2	3	2-3	2-3

*The law permits a combination of nine instances of any of the above usages per course per term.

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